

HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL NO : 61 of 2006

Between:

Chaitanya Kalasala Junior College,

Karmanghat, Ranga Reddy District,

Rep. by its Special Officer

D. Ramakrishna Reddy.

..... Appellant/Petitioner

AND

The District Collector,

Ranga Reddy District,

Lakdikapool, Hyderabad and another.

.....RESPONDENTS

::JUDGMENT::

Counsel for the Petitioner : MR. W.B. Srinivas.

Counsel for Respondent Nos.1 and 2 : Government Pleader for Revenue

24th January, 2006

Per G.S.SINGHVI, CJ

This is an appeal for setting aside order dated 15.12.2005 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for quashing order dated 4.8.2005 passed by Joint Collector, Ranga Reddy District dismissing the revision filed by it under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act') as not maintainable.

A perusal of the record shows that Chaitanya Kala Samithi, which is a society registered under the Societies Registration Act, 1860 had purchased land comprised in S.No.59 situated in Karmanghat village, which now forms part of Ranga Reddy District. In 1996, the Society made an application for issuance of Pattadar Passbook. After making enquiry, Mandal Revenue Officer, Saroornagar Mandal vide his order dated 27.6.1996, granted patta in favour of the Society and incorporated its name as pattadar and possessor in respect of the land in question. After almost 9 years, the petitioner filed a revision under Section 9 of the Act questioning order dated 27.6.1996 on the ground that the same had been obtained by the Samithi by practicing fraud. It was the pleaded case of the petitioner that the property in question had been purchased in its name and building had been constructed some time before 1987 but without disclosing this fact, the Samithi got its name incorporated as 'pattadar and possessor'. It was further pleaded that the Special Officer appointed to manage the affairs of the college came to know about this development only on receipt of notice dated 9.10.2002 issued in the proceedings initiated by Charminar Cooperative Urban Bank Limited, from whom the loan appears to have been taken and the land in question mortgaged by Sri R.Sundara Ramaiah.

By an order dated 4.8.2005, Joint Collector, Ranga Reddy District dismissed the revision petition as not maintainable by observing that the land in question does not fall within the ambit of Section 2(4) of the Act.

The learned Single Judge dismissed the writ petition filed by the appellant on the ground that the provisions of the Act are not applicable to the land on which building is stated to have been constructed.

Learned counsel for the appellant made strenuous efforts to persuade us to nullify the order dated 4.8.2005 by arguing that the Joint Collector committed a jurisdictional error by refusing to entertain the revision petition ignoring the fact that the original order dated 27.6.1996 passed by the Mandal Revenue Officer was nullity. Learned counsel emphasized that even though the land purchased in the name of the appellant was agricultural, with the construction of the building it no longer remained a land on which the provisions of the Act could be applied and, therefore, the Mandal Revenue Officer did not have the jurisdiction to entertain the application made by the Samithi. He submitted that the revisional authority should have entertained the petition and annulled the order passed by the Mandal Revenue Officer. He then argued that the learned Single Judge committed a serious error by refusing to entertain the appellant's challenge to order dated 4.8.2005 on the spacious ground that the land in question does not fall within the definition contained in Section 2 (4) of the Act.

In our opinion, there is no merit in the contentions of the learned counsel and the appeal is liable to be dismissed summarily. Admittedly, the character of the land purchased by the society, which was agriculture in nature had undergone a change because the same had been put to non agricultural use and the provisions of 1971 Act were not applicable to the said property. This being the position, the revisional authority did not commit any error by refusing to entertain the revision filed by the appellant.

The appellant's plea that order dated 27.6.1996, passed by the Mandal Revenue Officer, was nullity could have been entertained by the learned Single Judge in the writ petition filed under Article 226 of the Constitution of India but from the prayer made in the writ petition and the accompanying affidavit, we find that the appellant had neither challenged the legality of order dated 27.6.1996 nor made a prayer for quashing of the same and in the absence of such a prayer, the appellant's plea for annulment of that order could not have been entertained.

We are further of the view that the writ petition filed by the appellant suffers from a fatal defect of non-impleadment of necessary party and on that ground alone, the

same should have been dismissed. A reading of the memo of revision filed by the appellant before the Joint Collector shows that the Chaitanya Kala Samithi, in whose favour, order dated 27.6.1996 had been made by the Mandal Revenue Officer was impleaded as one of the respondents. However, the appellant deliberately omitted to implead the Samithi as a party to the writ petition. This appears to have been done with a view to obtain an order at the back of the Samithi. In our considered view, the Samithi was a necessary party and in its absence, the Court could not have passed any order adversely affecting its interest.

Another reason for our disinclination to interfere with the discretion exercised by the learned Single Judge is that the revision filed by the appellant under Section 9 of the Act was highly belated. The appellant did try to explain the delay of 9 years by asserting that it came to know about order dated 27.6.1976 only on 9.10.2002 when the Special Officer received the notice of the execution proceedings instituted by Charminar Cooperative Urban Bank Limited. However, no explanation for the time gap of 2 years 8 months between the alleged receipt of notice of the execution petition and filing of the writ petition was given. Therefore, the learned Single Judge could have been justified in refusing to entertain the petitioner's prayer on the ground of laches.

For the reasons stated above, the appeal is dismissed.

G.S.SINGHVI, CJ

Dt.24.1.2006

G.BHAVANI PRASAD,J

msv